

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1951 Enterprise Zones
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**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.1951 Enterprise Zones

- a) Building Materials Purchased for Physical Incorporation into Real Estate Located in an Enterprise Zone -- In General
 - 1) Effective September 1, 1985, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of building materials that will be incorporated into real estate located in an *enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction*. (Section 5k of the Act)
 - 2) Prior to February 18, 1992, the only limitation on the deduction was that the retailer from whom the building materials were purchased had to be located in a municipality or county that created the enterprise zone into which the materials were incorporated.
 - 3) Effective February 18, 1992, the municipalities and counties that created an enterprise zone could place restrictions on the scope of the deduction by ordinance.
 - A) Example: The local ordinance could restrict the deduction to building materials purchased for a job for which a building permit had been issued.
 - B) Example: The local ordinance could restrict the deduction to building materials purchased for incorporation into commercial property.
 - 4) Effective January 1, 2002, there is no longer any requirement that the retailer be located in a municipality or county that created the enterprise zone into which the materials will be incorporated. However, any restrictions on the deduction contained in an ordinance in effect at the retailer's location control the sale.
 - 5) Effective August 6, 2002, there is still no requirement that the retailer be located in a municipality or county that created the enterprise zone into which the materials will be incorporated. However, restrictions on the deduction contained in the ordinance in effect at the retailer's location no longer control the sale. Rather, the purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated.

That Certificate of Eligibility for Sales Tax Exemption will certify that the building project identified therein meets all the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located. In order to purchase building materials for that project tax-free, the purchaser must provide a copy of that Certificate to the retailer along with the purchaser's own certification that the materials will be incorporated into the building project identified in the Certificate of Eligibility for Sales Tax Exemption.

b) For purchases made between September 1, 1985 and December 31, 2001:

- 1) The retailer of qualifying building materials must be located in the municipality or in the unincorporated area of the county that has established the enterprise zone into which the building materials will be incorporated. In order to establish that the retailer is located in the municipality or unincorporated area of the county that has established the enterprise zone, the retailer must at the time of sale:
 - A) have an identifiable physical presence in the municipality or the unincorporated area of the county that has established the enterprise zone;
 - B) be registered with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone; and
 - C) be able to document the acceptance of purchase orders at a location in the municipality or the unincorporated area of the county that has established the enterprise zone.
- 2) In order to establish that the purchaser purchased qualifying building materials from a qualified retailer, the following two separate transactions must exist:
 - A) a sale from a supplier to the retailer who is located in the jurisdiction that created the enterprise zone (exempt as a sale for resale); and
 - B) a sale from the retailer who is located in the jurisdiction that created the enterprise zone to a purchaser who will incorporate those materials into real estate located in the enterprise zone (exempt by reason of the enterprise zone building materials exemption).

AGENCY NOTE: Each of these transactions must exist independent of the other, and the exemption applicable to each transaction must be properly documented. These transactions must be reflected in the books and records of the qualified retailer.

- 3) For purposes of the exemption as it existed between September 1, 1985 and December 31, 2001, the following documentation establishes a sale from a supplier to the retailer who is located in the jurisdiction that created the enterprise zone:
 - A) a purchase order from the retailer to the supplier;
 - B) a Certificate of Resale from the retailer to the supplier;

- C) an invoice from the supplier to the retailer; and
 - D) payment to the supplier from the retailer.
- 4) For purposes of the exemption as it existed between September 1, 1985 and December 31, 2001, the following documentation establishes a sale from the retailer who is located in the jurisdiction that created the enterprise zone to the purchaser:
 - A) a purchase order from the purchaser to the retailer;
 - B) an enterprise zone building materials certification from the purchaser to the retailer containing all of the information set forth at Section 130.1951(b)(5);
 - C) an invoice from the retailer to the purchaser; and
 - D) payment to the retailer from the purchaser.
- 5) In order to claim the exemption as it existed between September 1, 1985 and December 31, 2001, a retailer must have among its books and records a written statement signed by the purchaser setting out facts that establish the deduction. This purchaser's statement must contain the following information:
 - A) a certification by the purchaser that the building materials being purchased are being purchased for incorporation into real estate located in an enterprise zone (and this must be the enterprise zone created by the jurisdiction in which the retailer is located);
 - B) a description of the building materials being purchased (this may be done by a cross reference to the retailer's invoice number);
 - C) the location of the real estate into which the building materials will be incorporated (this may be done by reference to the street address of the real estate);
 - D) the name of the enterprise zone in which that real estate is located (and the retailer must insure that he is located within the municipality or in an unincorporated area of the county that established the enterprise zone named in the purchaser's statement); and
 - E) the purchaser's signature and date of signing.
- c) For purchases made on and after January 1, 2002 through August 5, 2002:
 - 1) On and after January 1, 2002 and through August 5, 2002, the deduction is still available but, effective January 1, 2002, there is no requirement that the retailer from whom the materials are purchased be located in a jurisdiction that created the enterprise zone into which the materials will be incorporated.

However, if the retailer is located in a jurisdiction that has an enterprise zone ordinance that places restrictions on sales of building materials being purchased for incorporation into its enterprise zone, then those restrictions are applicable to all sales of building materials being purchased for incorporation into any Illinois enterprise zone.

- 2) The general rule is to look for an enterprise zone ordinance in effect in the jurisdiction in which the retailer is located. If an enterprise zone ordinance is in effect in the retailer's jurisdiction, the sale can be made tax-free subject to any restrictions in that ordinance. If that ordinance contains no restrictions, then the sale can be made tax-free. In either event, when the deduction is claimed, the purchaser must certify, in writing, to the retailer that the materials will be incorporated into real estate located in an Illinois enterprise zone in accordance with Section 130.1951(c)(6) and the retailer must retain that certification in his books and records. Restrictions, or the absence of restrictions, in effect for the enterprise zone into which the building materials will be incorporated do not matter (unless the retailer is also located in the jurisdiction that created that enterprise zone).
- 3) If the retailer is located in a jurisdiction that has no enterprise zone ordinance, then there are no restrictions on the sale of building materials by that retailer for incorporation into any Illinois enterprise zone. Anyone purchasing building materials from the retailer can make the purchase tax-free so long as the material will be incorporated into an Illinois enterprise zone and the purchaser so certifies in accordance with Section 130.1951(c)(6). This is true even though the enterprise zone into which the materials will be incorporated has restrictions. In this situation, restrictions in the ordinance governing the enterprise zone into which the materials will be incorporated do not matter.
 - A) Example: The retailer is located in City A and City A has no enterprise zone and no enterprise zone ordinance. In this example, the deduction is available to the retailer without restriction as long as the materials will be incorporated into real estate located in any Illinois enterprise zone. This is true even though the enterprise zone ordinance governing the enterprise zone into which the materials will be incorporated has restrictions.

Stated conversely, a construction contractor purchasing building materials for incorporation into City B's enterprise zone can purchase those materials without restriction from the retailer in City A and this is true even if City B's enterprise zone ordinance has restrictions.

- B) Example: A retailer is located outside Illinois. The deduction has no effect on the sales tax due at the retailer's out-of-state location and cannot be used to avoid any sales tax due at the out-of-state location. However, if an Illinois construction contractor purchases building materials from the out-of-state retailer, the Illinois contractor incurs no Illinois use tax liability on his cost price of those materials if he incorporates them into real estate located in any Illinois enterprise zone. This is true even though the ordinance governing the enterprise zone into which the materials will be incorporated has restrictions.

- 4) If the retailer is located in a jurisdiction that has an enterprise zone ordinance and that ordinance contains no restrictions on the sale of enterprise zone building materials, then there are no restrictions on the sale of building materials by that retailer for incorporation into any Illinois enterprise zone. Anyone purchasing building materials from the retailer can make the purchase tax-free so long as the material will be incorporated into an Illinois enterprise zone. This is true even though the enterprise zone into which the materials will be incorporated has restrictions. In this situation, restrictions in the ordinance governing the enterprise zone into which the materials will be incorporated do not matter.
- 5) If the retailer is located in a jurisdiction that has an enterprise zone ordinance and that ordinance contains restrictions on the sale of enterprise zone building materials, then those restrictions control every sale of building materials for incorporation into any Illinois enterprise zone. In this situation, it is imperative that the retailer and the purchaser be familiar with the restrictions in the enterprise zone ordinance in effect in the retailer's jurisdiction. The deduction may or may not be available, depending on those restrictions.
 - A) Example: The retailer is located in City A and City A's enterprise zone ordinance specifies that the deduction is available only to building materials to be incorporated into City A's enterprise zone. In this example, the deduction is available to the retailer only when he sells building materials to be incorporated into City A's enterprise zone. The retailer cannot make tax-free sales of building materials for incorporation into any other enterprise zone.

Stated conversely, in this example a construction contractor purchasing building materials for incorporation into City B's enterprise zone cannot claim the deduction when purchasing those materials from the retailer located in City A.

- B) Example: The retailer is located in City A and City A's enterprise zone ordinance does not specify that the materials must be incorporated into City A's enterprise zone. However, it does specify that the materials must be used in an enterprise zone project for which City A has issued a building permit. In this example, the exemption is available to the retailer only when he sells building materials to be incorporated into City A's enterprise zone. The retailer cannot make tax-free sales of building materials to be incorporated into any other enterprise zone. This is so because City A cannot issue a building permit for a project in another city's enterprise zone. Stated conversely, in this example, a construction contractor purchasing building materials for incorporation into City B's enterprise zone cannot claim the deduction when purchasing from the retailer located in City A. Again, this is so because City A could not have issued a building permit for the project in City B.
 - C) Example: The retailer is located in City A and City A's enterprise zone ordinance does not specify that the materials must be incorporated into City A's enterprise zone and it does not specify that the materials must be used in a project for which City A has issued a building permit. However, it does specify that the materials must be used in a project for which "a building permit" has been issued. In this example, the deduction would be available

to the retailer in City A when selling building materials for incorporation into any Illinois enterprise zone so long as a building permit has been issued to the project by the appropriate local authority.

Stated conversely, in this example, a construction contractor purchasing building materials for incorporation into City B's enterprise zone can claim the deduction when purchasing from the retailer in City A but only if the materials will be used in a project for which a building permit has been issued by the appropriate authority in City B.

- D) Example: The retailer is located in City A and the only restriction in City A's enterprise zone ordinance is that the building materials must be used in a commercial project. In this example, the deduction is available to the retailer in City A when selling building materials for incorporation into any Illinois enterprise zone so long as the building materials will be incorporated into commercial real estate.

Stated conversely, in this example, a construction contractor purchasing building materials for incorporation into City B's enterprise zone can claim the deduction when purchasing from the retailer in City A but only if the materials will be used in a commercial project.

- E) Again, the restrictions contained in the enterprise zone ordinance in effect at the retailer's location control. Consequently, it is crucial that retailers and their customers be familiar with the enterprise zone ordinance in effect at the retailer's location and that all restrictions in that ordinance are observed.

- 6) A retailer claiming the deduction as it exists on and after January 1, 2002 through August 5, 2002 must have among its books and records a written statement signed by the purchaser setting out facts that establish the deduction. This purchaser's statement must contain the following information:

- A) a certification by the purchaser that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone;
- B) a description of the building materials being purchased (this may be done by a cross reference to the retailer's invoice number);
- C) the location of the real estate into which the building materials will be incorporated (this may be done by reference to the street address of the real estate);
- D) the name of the enterprise zone in which that real estate is located;
- E) purchaser's signature and date of signing.

- d) For purchases made on and after August 6, 2002:

- 1) On and after August 6, 2002, the deduction is still available and there is no requirement that the retailer from whom the materials are purchased be located in a

jurisdiction that created the enterprise zone into which the materials will be incorporated. In addition, restrictions in the enterprise zone ordinance in effect at the retailer's location are no longer applicable to purchases of building materials for incorporation into another enterprise zone. Rather, the municipality or county that created the enterprise zone into which the materials will be incorporated can limit the deduction by ordinance. However, that ordinance may not require that the materials be purchased from any class of retailers and it may not prohibit the purchase being made from any class of retailers. All "qualified sales" of building materials sold for incorporation into any Illinois enterprise zone are eligible for the deduction.

- 2) A "qualified sale" means a sale of building materials:
 - A) for incorporation into real estate in an Illinois enterprise zone,
 - B) as part of a building project,
 - C) for which a Certificate of Eligibility for Sales Tax Exemption has been issued,
 - D) by the administrator of the enterprise zone in which the project is located.
- 3) The Certificate of Eligibility for Sales Tax Exemption must contain:
 - A) a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located;
 - B) the location or street address of the building project that is the subject of the Certificate;
 - C) the signature of the administrator of the enterprise zone in which the building project is located.
- 4) Certification. A retailer claiming the deduction on and after August 6, 2002 must have among its books and records:
 - A) a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated; and
 - B) a certification from the purchaser of the building materials containing the following:
 - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone,
 - ii) the location or address of that real estate,
 - iii) the name of the enterprise zone in which that real estate is located,

- iv) a description of the building materials being purchased for incorporation into that real estate,
 - v) the date of the purchase, and
 - vi) the purchaser's signature.
- e) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. For example, gross receipts from sales of:
 - 1) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction;
 - 2) plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction;
 - 3) heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the deduction;
 - 4) electrical systems and components thereof such as wiring, outlets and light fixtures that are physically incorporated into the real estate can qualify for the deduction;
 - 5) central air conditioning systems, ventilation systems and components thereof that are physically incorporated into the real estate can qualify for the deduction;
 - 6) built-in cabinets and other woodwork that are physically incorporated into the real estate can qualify for the deduction;
 - 7) built-in appliances such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate can qualify for the deduction;
 - 8) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips") can qualify for the deduction.
- f) Items that are not physically incorporated into the real estate cannot qualify for the deduction. For example, gross receipts from sales of:
 - 1) tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but that are not physically incorporated into the real estate, do not qualify for the deduction;
 - 2) free-standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers that may be connected to and

operate from a building's electrical or plumbing system but which do not become a component of those systems do not qualify for the deduction;

- 3) floor coverings that are area rugs or that are attached to the structure using only two-sided tape do not qualify for the deduction.
- g) Tangible Personal Property Purchased for Use or Consumption within an Enterprise Zone in the Process of Manufacturing or Assembling by Certain Business Enterprises Certified by the Department of Commerce and Community Affairs
- 1) Effective September 25, 1985, the Illinois Retailers' Occupation Tax does not apply to retail sales *of tangible personal property to be used or consumed within an enterprise zone or subject to the provisions of Section 5.5 of the Enterprise Zone Act, all tangible personal property to be used or consumed by any high impact business, in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease* so long as the use or consumption is made by business enterprises that in the case of a high impact business having been designated pursuant to the terms of Section 5.5(a) of the Enterprise Zone Act [20 ILCS 625/5.5] or:
 - A) in the case of an enterprise zone:
 - i) *make investments which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*
 - ii) *make investments which cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*
 - iii) *make investments of a minimum of \$40,000,000; and*
 - B) *are located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act; and*
 - C) *are certified by the Department of Commerce and Community Affairs as complying with the requirements specified in subsections (f)(1)(A) and (B); and*
 - D) *retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption. (Sections 1d and 1f of the Act)*
 - 2) Business enterprises seeking certificates of eligibility must make application to the Department of Commerce and Community Affairs on application forms provided by the Department of Commerce and Community Affairs. The Illinois Department of Revenue has no authority to certify business enterprises for the purposes of this exemption.
 - 3) Once a business enterprise is certified, only the use or consumption within the enterprise zone of tangible personal property in manufacturing or assembling

qualifies for the exemption. No item to be used or consumed outside the Enterprise Zone qualifies for the exemption. Sales of tangible personal property used in activities that do not constitute manufacturing or assembling remain subject to the tax. For purposes of this Section, manufacturing and assembling have the same meaning as ascribed at Section 130.330(b)(2) through (9) of this Part.

- 4) The tangible personal property must be used in a manufacturing or assembling process but is not limited to machinery and equipment. The exemption is available for all tangible personal property used or consumed in manufacturing or assembling and includes *repair and replacement parts for machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale, or lease, and equipment, manufacturing fuels, material and supplies for the maintenance, repair or operation of such manufacturing or assembling machinery or equipment.* (Section 1d of the Act)
- 5) For example, this exemption extends to:
 - A) machinery and equipment that would otherwise qualify under the manufacturing machinery and equipment exemption because of being used in the activities set out at Section 130.330(d)(3) of this Part, and repair and replacement parts for such machinery and equipment;
 - B) hand tools used in the activities set out at Section 130.330(d)(3) of this Part;
 - C) materials and supplies, such as abrasives, acids, polishing compounds or lubricants used or consumed in the activities set out at Section 130.330(d)(3) of this Part;
 - D) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part;
 - E) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part;
 - F) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to Retailers' Occupation Tax or Use Tax liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part; and
 - G) protective clothing and safety equipment such as gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter masks used when maintaining, repairing or operating machinery and equipment that qualifies for the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part.

- 6) The law requires that tangible personal property be used primarily in manufacturing or assembling. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the deduction.
- 7) The exemption does not extend to tangible personal property that is not used or consumed in the manufacturing or assembling process itself. This is true even though the item is used in an activity that is essential to manufacturing or assembling. For example, the exemption does not extend to:
 - A) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the manufacturing machinery and equipment exemption;
 - B) tangible personal property used or consumed in research and development of new products, production techniques or production machinery;
 - C) tangible personal property used to store, convey, handle or transport materials, parts or subassemblies prior to their entrance into the production cycle;
 - D) tangible personal property used to store, convey, handle or transport finished articles after completion of the production cycle;
 - E) tangible personal property used to transport work-in-process or finished articles between production plants;
 - F) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, product exhibition and promotion or personnel recruitment, selection or training;
 - G) tangible personal property used or consumed as general production plant safety equipment;
 - H) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control or illumination, not required by a manufacturing or assembling process;
 - I) tangible personal property used or consumed in the preparation of food and beverages by a retailer for retail sale, such as restaurants, vending machines and food service establishments;

- J) fuel used or consumed in the operation of any machinery or equipment that would not qualify for exemption under the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part;
 - K) building materials that become physically incorporated into foundations or housings for machinery and equipment -- although the building materials may qualify for exemption under the provisions of subsection (a) of this Section if all requirements set out therein are met; and
 - L) building materials dedicated to general construction purposes at a production plant -- although the building materials may qualify for exemption under the provisions of subsection (a) of this Section if all requirements set out therein are met.
- 8) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect Illinois sales tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.
- 9) Product Use

The statute requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for sale or lease. For information concerning this requirement, see Section 130.330(e) of this Part that is incorporated by reference in this Part.

10) Sales to Lessors of Certified Business Enterprises

The substance and provisions of Section 130.330(f) of this Part are incorporated by reference herein. For the purpose of this incorporation, references in Section 130.330(f) to "manufacturers" mean "certified business enterprises".

11) Exemption Certification

- A) When a certified business enterprise (or the lessor to a certified business enterprise) initially purchases qualifying items from an Illinois registered supplier, the supplier must be provided with:
 - i) a copy of the current certificate of eligibility issued by the Department of Commerce and Community Affairs; and
 - ii) a written statement signed by the certified business enterprise (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a manufacturing or assembling process at a location in an enterprise zone established under the authority of the Illinois Enterprise Zone Act. (Sections 1d, 1e, 1f and 5k of the Act)
- B) So long as a copy of a current certificate of eligibility and a statement of exemption are maintained by a supplier, the certified business enterprise (or its lessor) may claim the exemption on subsequent purchases from that

supplier by indicating on the face of purchase orders that the transaction is exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by the Department of Commerce and Community Affairs on the face of the certificate of eligibility.

- C) If a certified business enterprise (or its lessor) purchases tangible personal property that is to be used in the process of manufacturing or assembling, then the certified business enterprise (or its lessor) must certify that fact to the seller in writing in order to relieve the seller of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a qualified business enterprise will be held liable for the tax by the Department if it is found that the item was not so used.
 - D) An item that initially is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonexempt location will become subject to tax at the time of its conversion based on the fair market value of the item at the time of conversion.
- h) Tangible Personal Property Purchased for Use or Consumption within an Enterprise Zone in the Process of Graphic Arts Production by Certain Business Enterprises Certified by the Department of Commerce and Community Affairs
- 1) No State or local Retailers' Occupation Tax applies to retail sales of *tangible personal property to be used or consumed within an enterprise zone . . . in the process of graphic arts production if used or consumed at a facility which is a Department of Commerce and Community Affairs certified business and located in a county of more than 4,000 persons and less than 45,000 persons* so long as the use or consumption is made by business enterprises:
 - A) that:
 - i) make investments that cause the creation of a minimum of 200 full-time jobs in Illinois; or
 - ii) make investments that cause the retention of a minimum of 2,000 full-time jobs in Illinois; or
 - iii) make investments of a minimum of \$40,000,000 and retain at least 90% of the jobs in place on the date that the exemption is granted and for the duration of the exemption; and
 - B) are located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act; and

- C) are certified by the Department of Commerce and Community Affairs as complying with the requirements specified in subsections (g)(1)(A), (B) and (C). (Sections 1d and 1f of the Act)
- 2) Business enterprises seeking certificates of eligibility must make application to the Department of Commerce and Community Affairs on application forms provided by the Department of Commerce and Community Affairs. The Illinois Department of Revenue has no authority to certify business enterprises for the purposes of this exemption.
- 3) Once a business enterprise is certified, only the use or consumption within the enterprise zone of tangible personal property in graphic arts production qualifies for the exemption. No item to be used or consumed outside the Enterprise Zone qualifies for the exemption. Sales of tangible personal property used in activities that do not constitute graphic arts production remain subject to the tax. The Department has defined graphic arts production at Section 130.325(b) of this Part.
- 4) The tangible personal property must be used in a graphic arts production process but is not limited to machinery and equipment. The exemption is available for all tangible personal property used or consumed in graphic arts production and includes *repair and replacement parts for machinery and equipment used primarily in the process of graphic arts production, and equipment, graphic arts fuels, material and supplies for the maintenance, repair or operation of such graphic arts machinery or equipment.* (Section 1d of the Act)
- 5) For example, this exemption extends to:
 - A) machinery and equipment that would otherwise qualify under the graphic arts machinery and equipment exemption because of being used in the activities set out at Section 130.325(b)(4) of this Part and for repair and replacement parts for the machinery and equipment;
 - B) printing plates, film, fountain solution, blanket wash, and ink additives used in the activities set out at Section 130.325(b)(4) of this Part;
 - C) materials and prep supplies, such as mylar, masking sheets, developer, hardener, fixer, replenishers, and tape used or consumed in the activities set out at Section 130.325(b)(4) of this Part;
 - D) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.325 of this Part;
 - E) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.325 of this Part;
 - F) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to Retailers' Occupation Tax or Use Tax liability when

sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.325 of this Part;

- G) protective clothing and safety equipment such as ear plugs, safety shoes, gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter masks used when maintaining, repairing or operating machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.325 of this Part.
- 6) The law requires that tangible personal property be used primarily in graphic arts production. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the deduction.
- 7) The exemption does not extend to tangible personal property that is not used or consumed in the graphic arts production process itself. This is true even though the item is used in an activity that is essential to graphic arts production. For example, the exemption does not extend to:
- A) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the graphic arts production exemption;
 - B) tangible personal property used to store, convey, handle or transport materials prior to their entrance into the production cycle;
 - C) tangible personal property used to store, convey, handle or transport finished articles after completion of the production cycle;
 - D) tangible personal property used to transport work-in-process or finished articles between production plants;
 - E) machinery and equipment used to gather information, photograph, transmit data, edit text, prepare drafts or copy or perform other data-related functions prior to final composition, typesetting, engraving or other preparation of the image carrier;
 - F) Xerographic or photocopying machines;
 - G) word processing, text editing machinery or computerized equipment unless it is an integral part of a final graphic arts operation such as a computer-controlled typesetting machine or equivalent that is used primarily in graphic arts production;
 - H) computers used to store data and generate text, maps, graphs or other print-out formats unless the product is an image carrier to be used to repetitively transfer images by printing. For example, a computer that generates an

image that may later be reproduced by a graphic arts process would not qualify while a computer-controlled engraving system that produces printing cylinders and computer-controlled digital typesetting equipment would qualify;

- I) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, product exhibition and promotion or personnel recruitment, selection or training;
 - J) tangible personal property used or consumed as general production plant safety equipment; or
 - K) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control or illumination, not required by a graphic arts production process.
- 8) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect Illinois sales tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.
- 9) Sales to Lessors of Certified Business Enterprises

The substance and provisions of Section 130.325 (b)(7) of this Part are incorporated by reference in this Part. For the purpose of this incorporation, references in Section 130.325 to "lessee" mean "certified business enterprises".

10) Exemption Certification

- A) When a certified business enterprise (or the lessor to a certified business enterprise) initially purchases qualifying items from an Illinois registered supplier, the supplier must be provided with:
 - i) a copy of the current certificate of eligibility issued by the Department of Commerce and Community Affairs; and
 - ii) a written statement signed by the certified business enterprise (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a graphic arts production process at a location in an enterprise zone established under the authority of the Illinois Enterprise Zone Act. (Sections 1d, 1e, 1f and 5k of the Act)
- B) So long as a copy of a current certificate of eligibility and a statement of exemption are maintained by a supplier, the certified business enterprise (or its lessor) may claim the exemption on subsequent purchases from that supplier by indicating on the face of purchase orders that the transaction is exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so

long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by the Department of Commerce and Community Affairs on the face of the certificate of eligibility.

- C) If a certified business enterprise (or its lessor) purchases tangible personal property that is to be used in the process of graphic arts production, then the certified business enterprise (or its lessor) must certify that fact to the seller in writing in order to relieve the seller of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a qualified business enterprise will be held liable for the tax by the Department if it is found that the item was not so used.
 - D) An item that initially is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonexempt location will become subject to tax at the time of its conversion based on the fair market value of the item at the time of conversion.
- i) Tangible Personal Property Purchased for Use or Consumption in the Operation of Pollution Control Facilities within an Enterprise Zone by Certain Business Enterprises Certified by the Department of Commerce and Community Affairs
- 1) Effective September 25, 1985, *subject to the provisions of Section 1f of the Act or subject to the provisions of Section 5.5 of the Illinois Enterprise Zone Act* [20 ILCS 625/5.5] the Illinois Retailers' Occupation Tax does not apply to gross receipts from retail sales of *tangible personal property to be used or consumed in the operation of pollution control facilities...within an enterprise zone* (Section 1e of the Act) so long as the use or consumption is made by a business enterprise that has complied with the requirements set out at subsection (f)(1)(A), (B) and (C) of this Section.
 - 2) The phrase "pollution control facilities" is defined as:
 - A) *any system, method, construction, device, or appliance appurtenant thereto, sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "air pollution" or "water pollution" is defined in the Environmental Protection Act...or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property.* (Section 1a of the Act)
 - B) The exemption for pollution control facilities described at Section 130.335 of this Part extends only to pollution control facilities and replacement parts therefor.
 - 3) However, if a business enterprise is certified by the Department of Commerce and Community Affairs, all tangible personal property used or consumed by it in the

operation of pollution control facilities within an enterprise zone is exempt from tax. In order to qualify, the item must be used exclusively in the enterprise zone and the pollution control facility must be in the enterprise zone. By way of illustration, this exemption includes:

- A) fuel used in operating pollution control facilities;
 - B) chemicals used in the operation of pollution control facilities;
 - C) catalysts used in the operation of pollution control facilities;
 - D) equipment used to test, monitor or otherwise ascertain the suitability of a fuel, chemical or catalyst for use in the operation of pollution control facilities;
 - E) equipment used to monitor or otherwise ascertain the effectiveness of pollution control facilities;
 - F) lubricants and coolants used in the operation of pollution control facilities;
 - G) protective clothing and safety equipment used in the operation of pollution control facilities;
 - H) equipment used to transport fuel, chemicals, catalysts, lubricants, coolants or other operational supplies from a stock pile located in the enterprise zone to a pollution control facility located in the same enterprise zone;
 - I) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to another pollution control facility within the same enterprise zone for further filtering, treatment or modification; and
 - J) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to a disposal site in the same enterprise zone.
- 4) No item used primarily in any activity other than the operation of pollution control facilities within an enterprise zone can qualify for this exemption. No item used or consumed outside the enterprise zone can qualify for the exemption. No item used or consumed in the operation of pollution control facilities that are located outside the enterprise zone can qualify for the exemption. By way of illustration, the exemption does not extend to:
- A) equipment used to transport fuel, chemicals, catalysts or any other tangible personal property from a point outside the enterprise zone to a pollution control facility inside the enterprise zone;
 - B) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to any location outside the enterprise zone;

- C) testing equipment used at a location outside an enterprise zone to monitor or otherwise ascertain the effectiveness of pollution control facilities located in an enterprise zone; or
 - D) testing equipment used at a location in an enterprise zone to monitor or otherwise ascertain the effectiveness of pollution control facilities located outside the enterprise zone.
- 5) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect Illinois sales tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.
- 6) Sales to Lessors of Certified Business Enterprises
 - A) For this exemption to apply, the purchaser need not himself employ the tangible personal property in the operation of pollution control facilities. If the purchaser leases the items to a lessee-certified business enterprise that uses the items in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may deduct the sales from his taxable gross receipts provided the purchaser-lessor provides to him a properly completed exemption certificate and the information contained thereon would support the exemption if the sale were made directly to the lessee-certified business enterprise.
 - B) Should a purchaser-lessor lease the items to a lessee that is not a certified business enterprise or to a certified business enterprise that does not use those items in the operation of pollution control facilities within an enterprise zone, then the purchaser-lessor will become liable for the tax from which he was previously exempted.
- 7) Exemption Certification
 - A) When a certified business enterprise (or the lessor of a certified business enterprise) initially purchases qualifying items from an Illinois registered supplier, the supplier must be provided with:
 - i) a copy of the current certificate of eligibility issued by the Department of Commerce and Community Affairs; and
 - ii) a written statement of exemption signed by the certified business enterprise (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in the operation of pollution control facilities at a specified location in a named enterprise zone established under the authority of the Illinois Enterprise Zone Act.
 - B) So long as a copy of a current certificate of eligibility and a statement of exemption are maintained by a supplier, the certified business enterprise (or its lessor) may claim the exemption on subsequent purchases from that supplier by indicating on the face of purchase orders that the transaction is

exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by the Department of Commerce and Community Affairs on the face of the certificate of eligibility.

- C) If a certified business enterprise (or its lessor) purchases tangible personal property that could reasonably be used in the operation of pollution control facilities, then the certified business enterprise (or its lessor) should certify to the seller in writing in order to relieve the seller of the duty of collecting and remitting tax on the sale. However, the purchaser who certifies that the item is being purchased for a qualifying use in an enterprise zone by a qualified business enterprise will be held liable for the tax by the Department if it is found that the item was not so used.
- D) An item that is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonexempt location will become subject to tax at the time of its conversion based on the fair market value of the item at the time of conversion to the nonexempt use.

(Source: Amended at 27 Ill. Reg. _____, effective _____)